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12 **UNITED STATES DISTRICT COURT**

13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 **SAN FRANCISCO DIVISION**

15 IRON TRIBE FITNESS, on behalf of itself) Case No. 3:25-cv-03281-CRB
16 and all others similarly situated,)
17 Plaintiff,) **DEFENDANT META PLATFORMS,**
18 v.) **INC.'S REPLY IN SUPPORT OF**
19 META PLATFORMS, INC.,) **MOTION TO DISMISS THE**
20 Defendant.) **COMPLAINT**
21 _____) Date: October 3, 2025
Time: 10:00 a.m.
Courtroom: 6, 17th Floor
Before the Honorable Charles R. Breyer

STATEMENT OF ISSUES

1. Whether all of plaintiff's claims should be dismissed as time-barred, given that all of them are subject to a four-year statute of limitations and the complaint is devoid of factual allegations that Facebook did anything allegedly unlawful within the last *seven* years.

2. Whether plaintiff's breach of contract claim should be dismissed, given that plaintiff does not identify any contractual provision that Facebook supposedly breached and does not make any factual allegations showing that it was injured due to Facebook's purported breach.

3. Whether plaintiff's claims for breach of the implied covenant of good faith and fair dealing, violation of the California Unfair Competition Law ("UCL"), and unjust enrichment—all of which rely on the same factual allegations and seek the same damages as plaintiff's breach of contract claim—should be dismissed for the same reasons as the breach of contract claim, in addition to further reasons specific to those claims.

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SUMMARY OF ARGUMENTS¹

Plaintiff's complaint, along with each of its claims, is entirely predicated on the idea that Facebook was contractually obligated to employ a second-price auction. But the complaint does not allege that Facebook *ever promised* to use a second-price auction. Plaintiff does not identify any contractual language in which Facebook committed to use such a process. Nor does it point to any allegation that Facebook *ever represented* that it would use such a process. Plaintiff instead points to a handful of articles—none published by Facebook or written by Facebook employees—whose authors characterized the auction process used by Facebook as a “Vickrey-Clarke-Groves auction.” On that basis, plaintiff claims that Facebook breached its contract with advertisers, or alternatively violated an implied duty to them. Plaintiff’s position, in a nutshell, is that if an author for *Wired* magazine believed that Facebook’s auction process worked in a certain way, Facebook was contractually bound to conduct its auctions per that author’s understanding. That extraordinary position finds no support in the law and should be rejected by this Court.

14 Faced with the reality that the complaint is devoid of factual allegations that would support
15 its claims, plaintiff’s opposition repeatedly misstates what is in the complaint. The opposition
16 effectively concedes that the complaint does not allege that Facebook contractually promised to
17 use a second-price auction process—which is why it instead requests that the Court “impos[e]” on
18 defendant the “obligation to abide by” that pricing methodology. Opp. at 19. And although the
19 opposition repeatedly contends that Facebook “purported” to use a second-price auction process
20 (*id.* at 4, 5, 14, 22), the complaint *never alleges* that Facebook made any such representation to
21 anyone. In sum: the alleged contract did not require Facebook to use that methodology, and the
22 complaint never alleges that Facebook told advertisers that it would use that methodology. Thus,
23 even taking all of the complaint’s allegations as true, all of its claims fail.

24 The opposition seeks to portray a nefarious picture of Facebook “concealing” its conduct
25 so it could continue to “overcharge” advertisers. But the narrative that plaintiff tries to advance is
26 predicated on the assumption that Facebook was somehow *obligated* to use a second-price auction

¹ Unless otherwise noted, emphasis has been added to quotations, and internal quotations, brackets, citations, and footnotes have been omitted.

1 process or represented to advertisers that it was doing so. Because those assumptions are not
 2 supported by any factual allegation in the complaint, plaintiff's factual narrative falls apart, and its
 3 claims fail to cross the "line between possibility and plausibility." *Bell Atl. Corp. v. Twombly*, 550
 4 U.S. 544, 557 (2007). Stripped of rhetoric, plaintiff is merely describing ordinary business activ-
 5 ity—e.g., alleged software updates and internal analysis of Facebook's auction methodology. Fa-
 6 cebook did not "conceal" that activity, because the concept of "concealment" would only apply if
 7 Facebook were under an obligation to use the second-price auction process or to disclose its pricing
 8 methodology to advertisers. And the amounts Facebook charged to advertisers could be charac-
 9 terized as "overcharges" only if Facebook were obligated to determine those amounts using a dif-
 10 ferent auction process—which, again, it was not. If plaintiff's theory were endorsed, any time a
 11 company changes its internal code or operations, it would be required to tell the world about it—
 12 despite the absence of any contract provision or representation on the topic—if any third party
 13 anywhere made an assertion regarding how that code operated. And, even more remarkably, com-
 14 panies in such circumstances would be *forbidden* from making a change to their internal code or
 15 processes—even if nothing in their contracts or public statements says anything about such topics.
 16 That would turn every change to any company's code into grounds for a lawsuit.

17 For these reasons, as well as those set forth below and in the opening brief, the Court should
 18 dismiss the complaint with prejudice.

19 FACTUAL ALLEGATIONS

20 The opposition brief repeatedly mischaracterizes plaintiff's own complaint, suggesting
 21 that it alleges facts that it does not. In the chart below, defendant highlights several of those dis-
 22 crepancies to demonstrate what the complaint *actually* alleges.

23 Argument in plaintiff's opposition	24 Allegation in plaintiff's complaint
25 "Although Facebook purported to use a 'sec- 26 ond-price' auction, told advertisers it was us- 27 ing a 'second price' auction, and advertisers 28 expected that Facebook actually employed a	The complaint is devoid of any factual allega- tion that Facebook "purported to use" a sec- ond-price auction or "told advertisers" it was doing that. The two paragraphs plaintiff cites do not include any such factual allegations.

<p>1 ‘second-price’ auction, during the Class Pe- 2 riod, Facebook instead operated a ‘blended- 3 price’ auction.” Opp. at 4 (citing Compl. ¶¶ 2, 4 34).</p>	<p>5 Paragraph 2 says that Facebook “purported to 6 use” a second-price auction process, but does 7 not plead <i>any</i> supporting facts or allege any representation by Facebook on the topic. Par- 8 agraph 34 does not allege anything about what 9 Facebook “told” advertisers or anyone else 10 about its auction process.</p>
<p>11 “Facebook’s auction process [was] . . . con- 12 firmed by Facebook’s Chief Economist to be a 13 second-price auction process” Opp. at 6 14 (citing Compl. ¶ 16).</p>	<p>15 Paragraph 16 does not include any statement 16 from “Facebook’s Chief Economist”—or from 17 any Facebook employee. Paragraph 33, which 18 contains the only alleged statement attributed 19 to an identified Facebook employee, attributes 20 the following statement—which says nothing 21 about a “second-price auction process”—to 22 “Facebook’s Chief Economist”: “If you’re an 23 advertiser and you’re getting a chance to show 24 your ad, you’re going to take away the oppor- 25 tunity from someone else. The price can be de- 26 termined based on how much value is being 27 displaced from those other people. An adver- 28 tiser will only win this placement if their ad re- ally is the most relevant, if it really is the best ad to show to this person at this point in time.”</p>
<p>29 “Even Facebook’s own engineers recognized 30 this conduct was wrongful” Opp. at 22 31 (citing Compl. ¶¶ 37–50).</p>	<p>32 There is no allegation that Facebook’s engi- 33 neers thought they were doing anything 34 “wrongful.” The complaint alleges that Face- 35 book’s engineers “investigat[ed] pricing irreg- 36 ularities in its advertising auction process,”</p>

	<p>1 Compl. ¶ 37, and that an unspecified person 2 wrote that they “cannot explain the pricing,” 3 <i>id.</i> ¶¶ 37, 43, and saw “something weird” in the 4 pricing model, <i>id.</i> ¶ 37. In keeping with these 5 allegations, the complaint alleges pricing “ir- 6 regularities,” “anomalies,” and “disparities.” 7 <i>Id.</i> ¶¶ 36–47.</p>
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8 ARGUMENT

9 I. This Action Is Time-Barred

10 As shown in Facebook’s opening brief, all of plaintiff’s claims are time-barred. Plaintiff
 11 does not dispute that all of its claims are subject to a four-year statute of limitations, as Facebook
 12 demonstrated. *See Mot.* at 6. Nor does plaintiff contest the fact that the complaint is devoid of
 13 any factual allegations of purported misconduct later than 2017. *See id.* at 7. Thus, because the
 14 expiration of the applicable statute of limitations “is apparent from the face” of the complaint—as
 15 plaintiff does not dispute—“it must be dismissed.” *Barnett v. Kapla*, 2020 WL 7428321, at *20
 16 (N.D. Cal. Dec. 18, 2020) (citing *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980)).

17 Plaintiff’s only argument is that its claims should be tolled under California’s discovery
 18 rule, notwithstanding that the statute of limitations lapsed years ago. *See Opp.* at 9–11. But plain-
 19 tiff misapprehends that rule. It does not permit a plaintiff to file suit whenever it likes—even years
 20 after the limitations period—and avoid a finding that its claims are time-barred merely by asserting
 21 that it did not have “reason to know” of its claims. *Id.* at 10. Rather, to invoke the rule, a plaintiff
 22 “must specifically plead facts to show (1) the time and manner of discovery and (2) the inability
 23 to have made earlier discovery despite reasonable diligence.” *Fox v. Ethicon Endo-Surgery, Inc.*,
 24 35 Cal. 4th 797, 808 (2005). “In assessing the sufficiency of the allegations of delayed discovery,
 25 the court places the burden on the plaintiff to ‘show diligence’; ‘conclusory allegations will not
 26 withstand [a motion to dismiss].’” *Id.*; *see Plumlee v. Pfizer, Inc.*, 664 F. App’x 651, 653 (9th Cir.
 27 2016) (affirming dismissal of complaint because plaintiff “failed to allege any facts that she was
 28 unable to discover the factual bases of her claims earlier despite exercising reasonable diligence”).

1 Here, plaintiff fails to meet its burden of showing reasonable diligence—or indeed, any
 2 diligence at all. The complaint merely alleges that the supposed “overcharges” were “discovered
 3 by Plaintiff through the investigation of undersigned counsel.” Compl. ¶ 52. There are no factual
 4 allegations—let alone facts alleged with the requisite specificity—as to the “time” when that “dis-
 5covery” took place; what steps, if any, plaintiff took to discover the alleged overcharges; or any-
 6 thing showing that plaintiff “was unable to discover [such facts] earlier despite exercising reason-
 7 able diligence.” *Plumlee*, 664 F. App’x at 653. Indeed, plaintiff’s own cases underscore the inad-
 8 equacy of plaintiff’s allegations. *See, e.g., Cover v. Windsor Surry Co.*, 2015 WL 4396215, at *4
 9 (N.D. Cal. July 17, 2015) (plaintiff “routinely inspected his property throughout each year”);
 10 *Wartell v. Wells Fargo Bank*, 755 F. Supp. 3d 1252, 1256 (N.D. Cal. 2024) (plaintiff specifically
 11 alleged the date when he discovered he was owed money).

12 Finally, plaintiff’s claim that Facebook “concede[d]” that discovery is necessary to deter-
 13 mine whether the discovery rule applies (Opp. at 11) is a misstatement of both Facebook’s briefing
 14 on its motion to stay discovery and the Court’s order on that motion. In connection with its motion
 15 to stay discovery, Facebook explained that the Court “need not consider” the statute of limitations
 16 issue to resolve that motion, because Facebook’s other motion-to-dismiss arguments were dispos-
 17 itive of the whole case. Dkt. No. 33 at 1. In its order, the Court recognized that this explanation
 18 was limited to the motion to stay, noting that Facebook had stated that the “statute of limitations
 19 argument” did not need to be addressed “in connection with this motion [i.e., the motion to stay
 20 discovery].” Dkt. No. 36 at 2. Plaintiff’s suggestion that Facebook “abandon[ed]” the argument
 21 (Opp. at 11)—or that the Court stated as much—is simply wrong.

22 **II. Plaintiff’s Breach of Contract Claim Should Be Dismissed Because Plaintiff Does
 23 Not Allege that Facebook Breached Any Contract**

24 The opening brief demonstrated that plaintiff’s breach of contract claim should be dis-
 25 missed for multiple reasons. This claim hinges on plaintiff’s assertion that Facebook was contrac-
 26 tually obligated to “operat[e] a blended-price auction instead of [a] second-price auction.” Opp.
 27 at 16. But, as the opening brief showed, the complaint does not identify any contractual provision
 28 requiring Facebook to use a second-price auction. *See* Mot. at 8–9. And plaintiff’s opposition

1 does not point to any such contractual language. Indeed, plaintiff effectively *concedes* the point
 2 when it asks the Court to “impos[e]” on Facebook the “obligation to abide by the [second-price]
 3 auction process.” Opp. at 19. It is clear that plaintiff’s argument is nothing more than a request
 4 that the Court retroactively impose on Facebook a contractual obligation that plaintiff acknowl-
 5 edges was not part of its agreement with Facebook. But courts may not “impose” obligations that
 6 are not part of the contract the parties agreed to. *See, e.g., Ramirez v. Charter Commc’ns, Inc.*, 16
 7 Cal. 5th 478, 516 (2024) (“Courts cannot rewrite agreements and impose terms to which neither
 8 party has agreed.”); *Levi Strauss & Co. v. Aetna Cas. & Sur. Co.*, 184 Cal. App. 3d 1479, 1486
 9 (1986) (“Courts will not add a term about which a contract is silent.”); *see also Nw. Env’t Def. Ctr.
 10 v. Bonneville Power Admin.*, 477 F.3d 668, 679 (9th Cir. 2007) (reciting “the unremarkable prop-
 11 osition of contract law that a court will not create new obligations that do not exist within the four
 12 corners of a contract”).

13 First, the purported contractual language on which plaintiff’s breach of contract claim is
 14 predicated does not require Facebook to use a second-price auction process. *See* Mot. at 8. Plain-
 15 tiff’s failure to identify any contractual provision that would have required Facebook to use a sec-
 16 ond-price auction process is fatal to its claim. To state a claim for breach of contract, a plaintiff
 17 “must identify a specific contract provision breached by the defendant”—and if the plaintiff “can-
 18 not point to any provision of the agreement that expresses the obligation sued upon,” the “breach
 19 of contract claim fails.” *Bodenburg v. Apple Inc.*, 146 F.4th 761, 767–68 (9th Cir. 2025) (citation
 20 modified). In light of this principle, “[c]ourts have consistently dismissed breach of contract
 21 claims where plaintiffs fail to allege the relevant promise or term that was supposedly breached.”
 22 *Hall v. YouTube, LLC*, 2025 WL 1482007, at *4 (N.D. Cal. May 5, 2025).

23 The Ninth Circuit’s recent decisions in *Bodenburg* and *Ray v. Google LLC*, 2025 WL
 24 2058822 (9th Cir. July 23, 2025), are instructive. In *Bodenburg*, the plaintiff alleged that Apple
 25 had breached its contract because the contract promised her “additional storage” beyond the
 26 amount of free storage that all customers receive. 146 F.4th at 767. The Ninth Circuit explained
 27 that her argument “founders on the actual language of the contract under which she sues,” because
 28 while that contract “obligated Apple to provide additional storage,” it did not obligate Apple to

1 provide the specific additional amount that the plaintiff “subjectively believed” she was entitled
 2 to. *Id.* at 768. Likewise, in *Ray*, the plaintiff alleged that “Google contracted to pay him \$22 per
 3 view of his YouTube videos.” 2025 WL 2058822, at *1. In affirming the dismissal of the breach
 4 of contract claim, the Ninth Circuit explained that none of the plaintiff’s alleged agreements with
 5 Google “contain such a pay-per-view promise” and held that “Google cannot breach a promise
 6 that does not exist.” *Id.* The same is true here: Facebook cannot breach a promise to use a second-
 7 price auction process “that does not exist,” and plaintiff’s inability to point to any provision of its
 8 contract that contains the “obligation sued upon” dooms its breach of contract claim.²

9 In an attempt to avoid dismissal, plaintiff relies on two out-of-district cases. Opp. at 17
 10 (citing *In re Yahoo! Litig.*, 251 F.R.D. 459, 471 (C.D. Cal. 2008) and *Checkmate Strategic Grp. v.*
 11 *Yahoo! Inc.*, 2005 WL 8252495, at *5 (C.D. Cal. Dec. 19, 2005)). But those cases only underscore
 12 the insufficiency of plaintiff’s allegations. In them, the plaintiff alleged that the defendant’s mar-
 13 keting materials were incorporated into the parties’ contract and made specific promises about
 14 advertising tools the defendant would provide. In *In re Yahoo!*, the plaintiff claimed that the con-
 15 tract’s promises to provide certain products amounted to a promise that the defendant would pro-
 16 vide the plaintiff with advertising services described in separate marketing materials. 251 F.R.D.
 17 at 471. The court allowed discovery because it determined that the plaintiff presented a “reaso-
 18 nable alternative interpretation” that did “not add to, detract from, or vary the Agreement’s express
 19 terms.” *Id.* at 471–72. The same judge came to the same conclusion in *Checkmate Strategic*
 20 *Group*, where the plaintiff claimed that the contract’s promise to charge “for all clicks on your
 21 search listings . . . which shall be computed according to [certain] rules” incorporated a promise
 22 to use certain software that the defendant described on a separate webpage. 2005 WL 8252495, at
 23 *1–2. In other words, in both cases, the court relied on statements that the defendant *itself* had
 24 made. Here, by contrast, plaintiff argues that *third-party assertions* about Facebook’s auction

26 2 Plaintiff tries to distinguish this Court’s decision in *Hammerling v. Google LLC*, 615 F. Supp.
 27 3d 1069 (N.D. Cal. July 18, 2022), by asserting that “Facebook’s contract [here] defined af-
 28 firmative obligations.” Opp. at 17. But that attempt fails because, again, plaintiff does not show that its agreement with Facebook imposed the only *relevant* “affirmative obligation,” i.e., the obligation to use a second-price auction process.

1 processes (not alleged to be part of the contract) should dictate the interpretation of the term “auction
 2 process” in Facebook’s contract with advertisers. Plaintiff cites no precedent allowing a claim
 3 to proceed based on such allegations.

4 Apparently recognizing that the complaint is devoid of allegations that would support the
 5 claim that Facebook was obligated to use a second-price auction process, plaintiff pivots to arguing
 6 that a different provision—stating that amounts owed by advertisers were “calculated based on our
 7 tracking mechanisms”—supports this claim. Opp. at 17–18; *see Compl. ¶ 53.*³ Plaintiff asserts
 8 that the “obvious necessity” of this provision is that Facebook was required to use a second-price
 9 auction. Opp. at 17. But plaintiff does not (and cannot) offer any explanation of why a commit-
 10 ment to calculate amounts owed based on unspecified “tracking mechanisms” would make it “nec-
 11 essary” for Facebook to use a second-price auction process in particular. Instead, plaintiff’s own
 12 allegations confirm that Facebook’s “tracking mechanisms” are distinct from its auction process.
 13 The complaint quotes a Facebook webpage describing the “*pricing* of Facebook ads” as “based on
 14 an auction system.” Compl. ¶ 55; *see also* Opp. at 6 (“advertisements were to be priced based on
 15 Facebook’s auction process”). That same webpage makes clear that advertisers are subsequently
 16 “charged” based on Facebook’s tracking of “the number of clicks or the number of impressions
 17 your ad received.” Compl. ¶ 55. Plaintiff does not allege that such tracking dictated the method-
 18 ology that is used when advertisers compete to win an auction, giving them the right to place their
 19 ad. Nor does the opposition attempt to explain how that could be the case.

20 In any event, the complaint does not include any factual allegation that Facebook was *not*
 21 calculating the amounts owed to advertisers “based on our tracking mechanisms.” Though the
 22 opposition asserts that Facebook “was improperly calculating what advertisers would owe,” Opp.
 23

24 ³ Plaintiff also advances breach allegations based on two other alleged provisions: a sentence
 25 providing that advertisers “will pay for your Orders in accordance with our Payments Terms,”
 26 Compl. ¶ 53, and a page in the “Facebook Ads Help Center” stating that advertisers would
 27 “only be charged for the number of clicks or number of impressions your ad received” based
 28 on Facebook’s auction process, *id.* ¶ 56. Plaintiff’s opposition does not make any argument
 regarding these terms. In any event, the complaint does not allege that advertisers did *not* pay
 in accordance with the Payment Terms, or that advertisers were *not* charged based on clicks
 and impressions, so neither of those can support plaintiff’s claim for breach of contract.

1 at 18, the complaint contains no allegations of any improper calculation of “clicks” or “impressions.” Instead, it quotes snippets of purported internal Facebook materials stating that someone
 2 allegedly believed there “is something weird in the alternate best gain computation in multi-feed,”
 3 someone “cannot explain” an unspecified “pricing” issue, and someone believed that unspecified
 4 “pricing results” did not “make sense.” Compl. ¶¶ 36–47. Whatever those alleged snippets may
 5 mean in their true context, they do not amount to an allegation that Facebook was not calculating
 6 amounts owed based on its “tracking mechanisms”⁴ or that the use of such “tracking mechanisms”
 7 had anything to do with the auction at all, let alone required the use of any particular auction
 8 pricing methodology.

10 The alleged internal investigations of Facebook’s code by its engineers that plaintiff relies
 11 upon are also irrelevant. A plaintiff cannot bootstrap its way into a breach of contract claim, notwithstanding
 12 the absence of any contractual obligation, by alleging that a defendant performed
 13 technical experiments on its own code.⁵ Nor can plaintiff manufacture a contractual obligation
 14 from snippets of alleged internal conversations between Facebook employees.

15 *Second*, plaintiff incorrectly suggests that Facebook is raising “factual disputes” about
 16 whether a blended-price auction is an “auction system.” Opp. at 19. Not so. This is not a “fact-
 17 based argument[] about a defendant’s preferred reading of the terms on its website” or “interpretation
 18 of the contract,” as plaintiff contends, *id.* & n.5, but a description of *plaintiff’s own allegations*.
 19 The complaint repeatedly describes a “blended price” auction as “an auction process.”

20
 21 ⁴ The allegations plaintiff relies upon in support of this argument describe a purported internal
 22 “experiment” that allegedly compared pricing of ads on Facebook with pricing of ads on another service (Instagram). Even taken as true, these allegations merely show that Facebook
 23 priced ads *differently* than Instagram. But that is irrelevant: the complaint alleges that Instagram “had a separate auction process” from Facebook (Compl. ¶ 34), and the complaint does
 24 not allege that Facebook was obligated to price ads in the same manner as Instagram did.

25 ⁵ In fact, in a webpage that the complaint cites, Facebook expressly notified advertisers that it
 26 may “make adjustments that could affect auction outcomes and prices, such as to improve ad
 27 quality and relevance, test or support ad types and ad products, [or] optimize the auction.”
 28 Meta Business Help Center, *About ad auctions*, available at <https://www.facebook.com/business/help/430291176997542?id=561906377587030> (cited at Compl. ¶ 56 n.3); *Weisberg v. Stripe, Inc.*, 2016 WL 3971296, at *2 (N.D. Cal. July 25, 2016) (finding that webpage expressly relied upon by plaintiff is incorporated into the complaint and considering content of webpage).

1 Compl. ¶ 2 (alleging that “Facebook used a flawed ‘blended price’ auction process”); *id.* ¶ 4
 2 (describing “Facebook’s ‘blended price’ auction”). In any event, the question is not whether
 3 Facebook *did* use a blended-price auction process, but whether it was *required contractually* to
 4 use a second-price auction process. It was not. And plaintiff can point to no contractual provision
 5 stating otherwise.

6 *Third*, despite plaintiff’s attempt to suggest that there are competing interpretations of “auc-
 7 tion system,” it has failed to allege any facts that would shed any light on the meaning of that
 8 phrase. In *In re Yahoo!*, the court agreed to consider extrinsic evidence because defendants alleg-
 9 edly made extracontractual representations to advertisers “in their sales and marketing materials”
 10 about the meaning of an undefined contract term. 251 F.R.D. at 471. Here, the complaint lacks
 11 any allegations that anyone at Facebook told advertisers anything about what the term “auction
 12 system” meant. Instead, the complaint relies on statements from academics and reporters who
 13 were not employees of Facebook. *See* Compl. ¶¶ 16, 32. Those statements are irrelevant as a
 14 matter of law, because California courts only “allow extrinsic evidence of the *parties’* understand-
 15 ing and intended meaning of the words used in their written agreement.” *In re Facebook PPC*
 16 *Advert. Litig.*, 709 F. Supp. 2d 762, 768–69 (N.D. Cal. 2010). Therefore, the articles plaintiff
 17 points to are “immaterial with respect to the intentions of the parties.” *Id.* at 769.⁶

18 Plaintiff further suggests—without explanation—that defendant’s position “renders its ob-
 19 ligation to use ‘tracking mechanisms’ to determine price meaningless.” Opp. at 20. But what the
 20 complaint actually alleges is that Facebook was obligated to charge advertisers “for the number of
 21 clicks or the number of impressions [the] ad received,” Compl. ¶ 55, and there is no allegation that
 22 Facebook failed to do so. Plaintiff separately alleges that Facebook was contractually obligated to
 23 price ads based on “an auction system.” *Id.* ¶¶ 55–56. But plaintiff fails to allege that Facebook
 24 did *not* use an auction process, and thus fails to allege a breach on this basis as well.

25 ⁶ In attempting to fault Facebook for “not having submitted any relevant evidence” with its mo-
 26 tion to dismiss, Opp. at 19 n.5, plaintiff ignores that it carries the burden of pleading the exist-
 27 ence of the contractual obligation it claims was breached. *See, e.g., Langan v. United Servs.
 28 Auto. Ass’n*, 69 F. Supp. 3d 965, 979–80 (N.D. Cal. 2014). Unlike in *HSBC Bank USA v. Dara
 Petroleum, Inc.*, there is no contract term alleged to be “unintelligible on its face” or “illogical”
 that would require extrinsic evidence. 2010 WL 2197525, at *5 (E.D. Cal. May 28, 2010).

Fourth, plaintiff fails to allege that it was overcharged due to any breach. See Mot. at 10. The sole case cited by plaintiff stands for the banal proposition that homeowners who overpaid for homes as a result of the defendant’s actions suffered an “injury-in-fact.” *Maya v. Centex Corp.*, 658 F.3d 1060, 1069 (9th Cir. 2011). But the question is whether plaintiff has sufficiently alleged that it was injured at all. The only relevant allegation is the following: “Iron Tribe advertised on Facebook through its advertising auction process during the Class Period.” Compl. ¶ 14.⁷ The complaint contains no factual allegations about plaintiff’s supposed purchases of Facebook ads, and therefore fails to sufficiently allege damages.

III. Plaintiff's Remaining Claims Should Be Dismissed

With its remaining claims, plaintiff tries to get around the fact that it does not allege that Facebook ever promised advertisers that it would use a second-price auction process. But these claims are nothing more than attempts to dress up the same breach of contract claim in different guises. They rely on the same factual allegations as the breach of contract claim and fail for the same reasons, in addition to other legal reasons specific to each claim.

A. Plaintiff's Breach of Implied Covenant of Good Faith and Fair Dealing Claim Should Be Dismissed

1. Plaintiff Cannot Use an Implied Covenant Claim to Impose Additional Substantive Duties on Facebook

As shown in the opening brief, a plaintiff cannot use an implied covenant claim to “impose substantive duties . . . on the contracting parties beyond those incorporated in the specific terms of their agreement.” *Guz v. Bechtel Nat’l, Inc.*, 24 Cal. 4th 317, 349–50 (2000); see Mot. at 11–12. But that is precisely what plaintiff seeks to do: impose on Facebook the duty of operating a specific type of auction—a second-price auction—even though plaintiff can point to no “specific terms of [its] agreement” with Facebook requiring it to use that type of auction. See *Guz*, 24 Cal. 4th at

⁷ Plaintiff's complaint does not define a specific time period for the "Class Period," which it alleges as running until the unspecified point "when the 2013 coding change caused Facebook to overcharge advertising customers." See Compl. ¶ 57.

1 349–50. Imposing such an obligation on Facebook would clearly go beyond the terms of the pur-
 2 ported contract alleged in the complaint.⁸

3 Indeed, plaintiff’s own cited cases explain that “the scope of conduct prohibited by the
 4 covenant of good faith is circumscribed by the purposes and *express terms* of the contract.” *Carma*
 5 *Devs. (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 2 Cal. 4th 342, 373 (1992); *accord Ellsworth v. U.S.*
 6 *Bank*, 908 F. Supp. 2d 1063, 1086 (N.D. Cal. 2012). And in the case plaintiff principally relies on
 7 (*Letizia v. Facebook Inc.*), the court found that the plaintiffs adequately alleged that the defendant
 8 had an implied “duty to provide [certain] advertising metrics” because plaintiff had “sufficiently
 9 alleged a course of performance [by the defendant] that gives rise” to such a duty—and in fact, the
 10 court found that the defendant had “concede[d] that it did in fact provide purchases of video ad-
 11 vertisement[s] with advertising metrics.” 267 F. Supp. 3d 1235, 1251–52 (N.D. Cal. 2017). By
 12 contrast, plaintiff fails to allege any “course of performance” by Facebook that would support any
 13 implied duty. To the contrary: as shown, plaintiff fails to identify *any* written or oral representa-
 14 tion (or any other “course of performance”) from Facebook promising to use a second-price auc-
 15 tion. *See Compl.* ¶¶ 32–33.

16 Plaintiff attempts to salvage this claim by pointing to several cases in which courts sus-
 17 tained implied covenant claims. But as those cases explain, to allege a claim “for breach of the
 18 covenant of good faith and fair dealing, a plaintiff must allege bad faith conduct, ‘which unfairly
 19 frustrates the agreed common purposes and disappoints the reasonable expectations of the other
 20 party thereby depriving that party of the benefits of the agreement.’” *Lever Your Bus. Inc. v.*
 21 *Sacred Hoops & Hardwood, Inc.*, 2020 WL 2465658, at *5 (C.D. Cal. May 11, 2020) (citing
 22 *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 222 Cal. App. 3d 1371, 1395 (1990)). Plaintiff fails
 23 to state an implied covenant claim because the complaint does not allege that plaintiff had any
 24 “expectations”—much less “reasonable expectations”—about which auction process Facebook

25 ⁸ Plaintiff asserts that “[n]othing in the parties’ agreement allowed Facebook to operate the ad-
 26 vertising auctions in a manner that contradicted the one that *Facebook represented it used.*”
 27 Opp. at 15. But as explained, this contention rests on a mischaracterization of plaintiff’s own
 28 complaint, which nowhere alleges that Facebook made any “representation” that it used a sec-
 ond-price auction. *See Compl.* ¶ 32 (quoting *Wired* magazine article claiming that Facebook
 uses a “VCG auction”).

would use. Instead, the complaint merely alleges that it was “widely understood” that Facebook used a second-price auction, based on one article in *Wired* magazine and two academic publications. Compl. ¶¶ 16, 17. But the complaint fails to allege facts suggesting that *plaintiff* read those articles, or had *any of its own* expectations about the auction process Facebook used. Instead, it merely alleges that “Iron Tribe is a fitness company [that] advertised on Facebook through its advertising auction process . . . and was damaged thereby.” *Id.* ¶ 14. The absence of any allegations regarding the “agreed common purposes” of Iron Tribe and Facebook or the “reasonable expectations” of Iron Tribe is fatal to this claim, and renders plaintiff’s cases inapt. *See, e.g., Robalo LLC v. Ramey*, 2012 WL 244340, at *6 (E.D. Cal. Jan. 25, 2012) (dismissing implied covenant claim because the complaint’s “allegations are insufficient to demonstrate that Defendant made a conscious and deliberate act that frustrated the agreed-upon common purposes of the agreement”); *Mendoza v. Countrywide Home Loans, Inc.*, 2009 WL 4706350, at *3–4 (N.D. Cal. Dec. 3, 2009) (dismissing implied covenant claim where complaint offered “nothing to substantiate the conclusory allegation that Defendants frustrated Plaintiffs’ reasonable expectations”); *see also Balboa Capital Corp. v. JAAM Transp. LLC*, 2023 WL 3089999, at *2 (C.D. Cal. Mar. 1, 2023) (dismissing implied covenant counterclaim because defendants conclusorily alleged that conduct “was not within the reasonable expectations of the parties” but “do not provide any factual allegations as to why”).

Moreover, the conclusory assertion that Facebook acted in supposed “bad faith”—which is all plaintiff ultimately offers, Opp. at 16—is not enough to salvage a legally deficient implied covenant claim. *See In re Google RTB Consumer Privacy Litig.*, 606 F. Supp. 3d 935, 945 (N.D. Cal. 2022) (dismissing implied covenant claim and rejecting conclusory allegations of “bad faith”). Nor do allegations that Facebook investigated how its code functions and *fixed* its code show any “bad faith” on the part of Facebook.

Plaintiff fares no better with its suggestion that this claim should be sustained because Facebook was “invested” with “discretionary power.” Opp. at 12–13. Plaintiff’s brief acknowledges that multiple courts have held that assertions of an “improper exercise of discretion” do not support an implied covenant claim. *Id.* at 14–15. The alleged fact that one Facebook website described

1 the pricing of ads as being “based on an auction system” (Compl. ¶ 55) does not amount to an
 2 allegation that the parties agreed to a contract under which Facebook was “expressly given a dis-
 3cretionary power” to choose between the auction processes plaintiff identifies. *Third Story Music,*
 4 *Inc. v. Waits*, 41 Cal. App. 4th 798, 808 (1995); *cf. Ellsworth*, 908 F. Supp. 2d at 1086 (explaining
 5 that in cases where the covenant is applicable, it is because the agreement between the parties
 6 “expressly permitted” the defendant to act “in any order the [defendant] chooses,” making the
 7 defendant’s “discretionary authority” subject to the covenant).

8 Plaintiff’s suggestion that Facebook “subjectively lack[ed] belief in the validity” of its con-
 9 duct or that its conduct was “objectively unreasonable” (Opp. at 13) is baseless. Plaintiff tries to
 10 substantiate these assertions by describing ordinary business conduct—e.g., software updates or
 11 internal inquiries into how computer code was functioning—as nefarious. But that narrative relies
 12 on the unsupported (and incorrect) presupposition that Facebook was *required* to use a second-
 13 price auction. In the absence of any obligation to use that type of auction, there is no basis for the
 14 Court to conclude that such allegations of ordinary behavior support a finding of wrongful conduct.

15 At bottom, plaintiff’s argument as to this claim boils down to its contention that “Face-
 16 book’s faithful execution of the second-price auction Facebook purported to use was fundamental
 17 to the parties’ agreement.” Opp. at 14. But that sentence encapsulates why the claim should be
 18 dismissed. As shown, the complaint offers no factual allegations showing either that (a) Facebook
 19 “purported to use” the second-price auction or (b) it was so much as *mentioned* in the “parties’
 20 agreement,” much less “fundamental” to it. *See, e.g., In re Google RTB*, 606 F. Supp. 3d at 944–
 21 45 (“If there exists a contractual relationship between the parties . . . the implied covenant is limited
 22 to assuring compliance with the express terms of the contract, and cannot be extended to create
 23 obligations not contemplated in the contract.”).

24 2. *The Implied Covenant Claim Should Be Dismissed as Duplicative*

25 The opening brief demonstrated that the implied covenant claim should be dismissed for
 26 the independent reason that it is duplicative of the breach of contract claim, because it relies “on
 27 the same alleged acts” and seeks “the same damages or other relief” sought for breach of contract.
 28 Mot. at 12. Plaintiff’s opposition does not argue that implied covenant claims are *not* subject to

1 dismissal on that basis as a matter of law, thus conceding the point. Instead, it attempts to argue
 2 that the implied covenant claim here is “distinct” from the breach of contract claim because it is
 3 predicated on alleged conduct “separate and apart from the express contractual breach.” Opp. at
 4 16. This argument borders on frivolous. As shown in the opening brief, both the breach of contract
 5 and implied covenant claims are based on the same factual allegations—i.e., that Facebook alleg-
 6 edly made a coding change in 2013 that violated its contract with advertisers, and overcharged
 7 them for several years due to that coding change—and seek the same damages. Mot. at 12. In
 8 fact, plaintiff’s opposition essentially *concedes* that the claims are predicated on the same allega-
 9 tions. Plaintiff argues that its implied covenant claim is based on the following conduct: “covering
 10 up the Coding Change, ‘slow roll[ing]’ the fix, and failing to ‘reimburse advertisers the amounts
 11 improperly overcharged.’” Opp. at 16. But at the bottom of the *same page*, plaintiff argues that
 12 the same conduct underpins its breach of contract claim: “Facebook’s conduct in implementing
 13 the Coding Change in 2013, overcharging advertisers in operating a blended-price auction instead
 14 of second-price auction, and then failing to disclose or return those overcharges, *violated Face-*
 15 *book’s contracts.*” *Id.*

16 Beyond plaintiff’s acknowledgement that the two claims are based on the same factual
 17 allegations, it is clear that both claims (and indeed, the entirety of the complaint) rely on the same
 18 alleged conduct—i.e., the purported use of a blended-price auction rather than a second-price auc-
 19 tion. Plaintiff vaguely contends that “covering up” the alleged 2013 coding change and “slow
 20 rolling” the alleged subsequent 2017 change constitute “conduct separate and apart from the ex-
 21 press contractual breach,” but does not explain how they are supposedly “separate”—as opposed
 22 to being aspects of the conduct that allegedly constituted the breach. *See, e.g., Cruz v. Townsquare*
Media, Inc., 2025 WL 2076626, at *8 (N.D. Cal. July 23, 2025) (dismissing implied covenant
 23 claim relying on “the same course of conduct that underlies” dismissed breach of contract claim);
Daniels v. Alphabet Inc., 2021 WL 1222166, at *9 (N.D. Cal. Mar. 31, 2021) (dismissing implied
 24 covenant claim based on alleged acts that “are the same acts that [plaintiff] says are the basis for
 25 his breach of contract claim” and seeking “the same relief” as breach of contract claim).
 26
 27
 28

1 Similarly, plaintiff’s suggestion that the implied covenant claim somehow seeks different
 2 damages (Opp. at 16) is baseless. The complaint alleges that Facebook’s use of a blended-price
 3 auction process led to “overcharges” that constituted “a breach of Facebook’s contract with Plain-
 4 tiff,” and seeks “actual damages” for its breach of contract claim. Compl. ¶ 72–73. The complaint
 5 alleges the same “overcharging of advertisers” in its implied covenant claim and likewise seeks
 6 “actual damages” for that claim. *Id.* ¶ 78. Those are identical “overcharge” damages.⁹

7 **B. Plaintiff’s UCL Claim Should Be Dismissed**

8 Plaintiff likewise fails to state a claim for a violation of the “unfair” prong of the UCL.

9 *First*, as the opening brief showed, plaintiff’s UCL claim should be dismissed because it is
 10 merely a repackaged version of plaintiff’s “garden-variety” breach of contract claim that does not
 11 allege unfair conduct “independent of the breach.” *See* Mot. at 13. Plaintiff does not respond to
 12 this argument. Instead, it asserts that a “plaintiff can state a UCL claim without alleging a con-
 13 tractual breach.” Opp. at 21. That is a non sequitur: the question is not whether UCL claims may
 14 be asserted that do not sound in contract, but rather whether a plaintiff can assert a UCL claim that
 15 is merely a duplicate of its breach of contract claim. The answer to the latter question is “no,” as
 16 the cases cited in the opening brief (*see* Mot. at 13) demonstrate—and as plaintiff fails to rebut.

17 Plaintiff’s opposition confirms that plaintiff is *not* alleging unfair conduct “independent of
 18 the breach,” as it would need to do for its UCL claim to be anything but an impermissible carbon-
 19 copy of its breach of contract claim. The opposition identifies the allegations supporting the UCL
 20 claim as: “Facebook’s Coding Change resulted in billions of dollars in overcharges,” Facebook
 21 “fail[ed] to identify and report the Coding Change,” and Facebook “concealed this massive over-
 22 charging through a ‘slow rollout’ of the fix.” Opp. at 21–22. But those are the *same allegations*
 23 that underpin the breach of contract claim. *See* Compl. ¶¶ 68–73 (summarizing breach of contract
 24 allegations); *see also* Opp. at 16 (contending, in connection with breach of contract claim, that

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 26
 27
 28 ⁹ Moreover, as explained above, plaintiff fails to sufficiently allege that it suffered any damages
 at all.

1 “Facebook’s conduct in implementing the Coding Change . . . overcharging advertisers . . . and
 2 then failing to disclose or return those overcharges, violated Facebook’s contracts”).¹⁰

3 *Second*, the opening brief demonstrated that plaintiff’s allegations merely parrot the legal
 4 standard for an “unfair business practice.” That is not enough to state a UCL claim and provides
 5 an independent basis for dismissal. Mot. at 13–14. In response, plaintiff merely recycles its *breach*
 6 of *contract* allegations (as noted above). And plaintiff does not attempt to show that the UCL
 7 claim amounts to anything *more* than a barebones recitation of the legal standard, which—as
 8 shown in the opening brief—is insufficient. *Id.*

9 *Third*, as shown in the opening brief, the claim does not satisfy either of the unfairness tests
 10 used by California courts. *Id.* at 14. The opposition only confirms that the complaint does not
 11 satisfy either test. The tethering test requires a plaintiff to show that conduct is “tethered to specific
 12 constitutional, statutory, or regulatory provisions.” *Id.* (*citing Taleshpour v. Apple Inc.*, 549 F.
 13 Supp. 3d 1033, 1045 (N.D. Cal. 2021), *aff’d*, 2022 WL 1577802 (9th Cir. May 19, 2022)). Neither
 14 the complaint nor opposition identifies any such “specific” provision. At most, the opposition
 15 contends that there is a vague “public policy” against “secretly overcharging advertisers” (Opp. at
 16 23 n.8), but does not purport to identify any “constitutional, statutory, or regulatory provision” to
 17 which the claim is “tethered,” as required. *See Wright v. Charles Schwab & Co., Inc.*, 2020 WL
 18 6822887, at *5 (N.D. Cal. Nov. 20, 2020) (unfair UCL claims fail if they do not allege “any spe-
 19 cific constitutional, statutory, or regulatory provision to which [the allegedly unfair] conduct is
 20 tethered”).¹¹ As to the balancing test, Facebook showed that plaintiff cannot state a UCL claim

21
 22 ¹⁰ To the extent the opposition suggests that the UCL claim may be distinguished because “Fa-
 23 cebook’s own engineers” supposedly “recognized this conduct was wrongful” (Opp. at 22),
 24 the attempt fails, including because plaintiff (again) misrepresents its own complaint—which
 25 alleges that engineers concluded that certain prices were unexplained or “weird,” not “wrong-
 26 ful.” Compl. ¶¶ 37–50. And even if a Facebook employee *did* believe there was “wrongful”
 27 conduct, plaintiff does not explain why such a personal opinion would be relevant to whether
 28 plaintiff states a claim.

29 Plaintiff’s failure to identify any such provision distinguishes this case from the ones plaintiff
 30 relies on. Opp. at 23 n.8; *see Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1107 (9th Cir. 2013),
 31 *as amended on denial of reh’g and reh’g en banc* (July 8, 2013) (statutes and regulations show-
 32 ing that “both state and federal law specifically prohibit retailers from advertising false
 33 ‘sales’”); *Day v. GEICO Cas. Co.*, 580 F. Supp. 3d 830, 845 (N.D. Cal. 2022) (discussing

1 under that theory because the claim is predicated on the same allegations that support its (fatally
 2 flawed) breach of contract claim. Mot. at 14. Plaintiff does not respond to that argument.

3 Finally, plaintiff's suggestion that unfairness claims under the UCL "cannot be resolved at
 4 the pleading stage" (Opp. at 20) is belied by the numerous cases that have dismissed such claims
 5 at this stage. *See, e.g., Bodenburg*, 146 F.4th at 769–70; *Husain v. Campbell Soup Co.*, 747 F.
 6 Supp. 3d 1265, 1275 (N.D. Cal. 2024) (Breyer, J.); *Hammerling v. Google LLC*, 615 F. Supp. 3d
 7 1069, 1094 (N.D. Cal. 2022) (Breyer, J.).

8 **C. Plaintiff's Unjust Enrichment Claim Should Be Dismissed**

9 Finally, plaintiff fails to state a claim for unjust enrichment. Because defendant did nothing
 10 "unjust" or otherwise wrongful or illegal, on the face of the complaint, the claim necessarily fails
 11 with plaintiff's other claims. In any event, California law does not permit standalone unjust en-
 12 richment claims. Even if it did, the overwhelming majority of courts have held that California law
 13 does not permit a plaintiff who alleges the breach of an enforceable contract to also assert a claim
 14 for unjust enrichment.

15 First, plaintiff's main argument supporting this claim is that Facebook allegedly "unfairly
 16 retained" what plaintiff characterizes as "overpayments" through "the undisclosed Coding
 17 Change." Opp. at 23. But as explained above, the complaint alleges nothing unfair or unlawful
 18 about Facebook's conduct. *Supra*, at 5–17. The unjust enrichment claim should be dismissed for
 19 that reason alone. *See, e.g., De Havilland v. FX Networks, LLC*, 21 Cal. App. 5th 845, 870 (2018)
 20 (explaining that because the plaintiff's other claims failed, "her unjust enrichment claim fails as
 21 well" on the principle "[t]here being no actionable wrong, there is no basis for the relief"); *accord*
 22 *Schrader Cellars, LLC v. Roach*, 2021 WL 9816545, at *5 (N.D. Cal. June 10, 2021).

23 Second, California does not recognize unjust enrichment as a "standalone cause of action,"
 24 as the Ninth Circuit has recognized. *See* Mot. at 15 (citing *Astiana v. Hain Celestial Grp.*, 783

25 provisions of California Insurance Code and bulletin from California Insurance Commis-
 26 sioner); *Fraley v. Facebook, Inc.*, 830 F. Supp. 2d 785, 813 (N.D. Cal. 2011) (finding that
 27 "Defendant's practice is contrary to a statutorily declared public policy" and citing California
 28 statute); *Cappello v. Walmart Inc.*, 394 F. Supp. 3d 1015, 1024 (N.D. Cal. 2019) ("this practice
 contravenes California's well-established public policy of protecting consumer data, as re-
 flected in Section 22576 and other statutes").

1 F.3d 753, 762 (9th Cir. 2015)). Despite faulting defendant for a “misstatement of law,” Opp. at
 2 23, plaintiff points to no precedential Ninth Circuit decision overruling *Astiana*.

3 Finally, as explained in the opening brief, a plaintiff may not simultaneously allege breach
 4 of an enforceable contract (as plaintiff does here) and also assert a claim for unjust enrichment.
 5 This Court recognized that principle in *Hammerling*. See 615 F. Supp. 3d at 1096. The Court
 6 relied on decisions from the Ninth Circuit and the California Court of Appeals, explaining that
 7 insofar as the court may “construe” an unjust enrichment claim as a “quasi-contract claim seeking
 8 restitution,” such a claim “does not lie when an enforceable, binding agreement exists defining the
 9 rights of the parties.” See *id.* (quoting *Astiana*, 783 F.3d at 762 and *Rutherford Holdings, LLC v.*
 10 *Plaza Del Rey*, 223 Cal. App. 4th 221 (2014)). A few months ago, this Court reaffirmed that
 11 principle, explaining that unjust enrichment “is not available” where the parties “have an enforce-
 12 able contract,” absent circumstances (e.g., fraud) not alleged here. *Stapleton v. JPMorgan Chase*
 13 *Bank*, 779 F. Supp. 3d 1059, 1075 (N.D. Cal. 2025) (Breyer, J.). Numerous other courts, state and
 14 federal, have confirmed this principle. See, e.g., *Pearl v. Coinbase Global, Inc.*, 2024 WL
 15 3416505, at *8 (N.D. Cal. July 15, 2024) (dismissing unjust enrichment claim because where “the
 16 parties have a contract,” there “cannot be a separate claim for unjust enrichment”); *Wright*, 2020
 17 WL 6822887, at *4 (dismissing unjust enrichment claim because “there is an enforceable contract
 18 here”); *Tawfik v. JPMorgan Chase Bank*, 2020 WL 5074398, at *8 (N.D. Cal. Aug. 26, 2020) (“A
 19 claim for unjust enrichment fails where parties have an enforceable, binding agreement”); *Durell*
 20 *v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (2010) (“An unjust enrichment theory is inap-
 21 plicable because [plaintiff] alleges the parties entered into express contracts.”).

22 Plaintiff’s argument that it should be allowed to plead both claims “in the alternative” under
 23 Rule 8 (Opp. at 24) has been rejected by federal and California courts. As explained in *Huynh v.*
 24 *Quora, Inc.*, though Rule 8 “allows pleading in the alternative,” this policy “has its limits”—and a
 25 plaintiff “may assert contradictory statements of fact only when legitimately in doubt about the
 26 facts in question.” 2019 WL 11502875, at *12 (N.D. Cal. Dec. 19, 2019) (quoting *Total Coverage,*
 27 *Inc. v. Cendant Settlement Servs. Grp.*, 252 F. App’x 123, 126 (9th Cir. 2007)). Thus, a plaintiff
 28 “cannot plead alternative theories that necessarily fail where an express contract defines the rights

1 of the parties.” *Id.* California courts have held the same. *See, e.g., Sepanossian v. Nat'l Ready*

2 Mixed Concrete Co., 97 Cal. App. 5th 192, 206–07 (2023) (rejecting unjust enrichment claim

3 pleaded “in the alternative” and holding that plaintiff was “precluded from asserting a quasi-con-

4 tract claim under the theory of unjust enrichment” because his “breach of contract claim pleaded

5 the existence of . . . enforceable agreements and [his] unjust enrichment claim did not deny the

6 existence or enforceability” of those agreements).

7 Plaintiff attempts to give the back of its hand to this authority, relying on three district court

8 cases that are either irrelevant or unpersuasive. One of those—*Shared Partnership v. Meta Plat-*

9 *forms, Inc.*—does not mention unjust enrichment claims; instead, it considered misrepresentation

10 claims. 2024 WL 4280936 (N.D. Cal. Sept. 23, 2024). It is true that in *Boobuli's LLC v. State*

11 *Farm Fire & Casualty Co.*, another court in this District declined to dismiss an unjust enrichment

12 claim. 562 F. Supp. 3d 469, 487 (N.D. Cal. 2021). That court followed a 2010 out-of-district

13 decision which cursorily concluded that plaintiffs may plead both breach of contract and unjust

14 enrichment, even if those “pleadings are inconsistent,” under Rule 8. *See id.* (citing *United States*

15 *ex rel. Begole v. Trenkle*, 2010 WL 11596170, at *11–12 (C.D. Cal. July 16, 2010)).¹² Respect-

16 fully, defendant submits that *Boobuli's* is an outlier and that this Court should follow its decisions

17 in *Hammerling* and *Stapleton*, as well as the other well-reasoned decisions discussed above.

18 CONCLUSION

19 For the foregoing reasons, defendant respectfully requests that the Court dismiss the com-

20 plaint. Because plaintiff’s breach of contract claim is fatally flawed, while its other claims fail as

21 a matter of law for multiple reasons—as shown above and in the opening brief—defendant re-

22 quests that the dismissal be with prejudice.¹³

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25 ¹² Plaintiff’s only other case—*Oracle Corp. v. SAP AG*—likewise cursorily concluded that a

26 cause of action may not be dismissed “simply because it conflicts with another cause of ac-

27 tion.” 2008 WL 5234260, at *9 (N.D. Cal. Dec. 15, 2008).

28 ¹³ On September 9, defendant filed an administrative motion for leave to file a reply brief of up

to 20 pages, in light of the fact that plaintiff had filed an over-long opposition brief of 25 pages

without seeking leave, along with a stipulation. Dkt. Nos. 39, 39-1.

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Respectfully submitted,

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